

1 District Judge John C. Coughneour
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 LANCE P. McDERMOTT,
10 Plaintiff,

11 v.
12 JOHN P. POTTER, Postmaster General, United
13 States Postal Service,
14 Defendant.

Case No. 08-1846 JCC

GOVERNMENT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

**Noted for consideration:
April 27, 2009.**

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16 COMES NOW Defendant John P. Potter ("Government"), by and through his counsel of
17 record and hereby respectfully submits his Response to Plaintiff's Motion for Summary
18 Judgment.¹ Defendant has moved to dismiss Plaintiff's Complaint based on insufficient service
19 of process pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure. *See* Motion to
20 Dismiss, Dkt. No. 11. Defendant asserts that because Plaintiff has not served the Government in
21 the manner and form required by law, the Defendant is not yet a party to this case and is therefore
22 not obligated to respond to the merits of Plaintiff's summary judgment motion. *Id.* Should the
23 Defendant become a party to this action, it is respectfully requested that he be given an
24 opportunity to substantively respond to Plaintiff's summary judgment motion.

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27 ¹ Because Plaintiff has moved the Court for summary judgment and an order of default, Defendant has filed
28 this response, its opposition default and motion to dismiss to preserve its defenses. By filing these pleadings,
Defendant neither concedes nor waives any jurisdictional defenses or claims of dismissal based on any other
defenses applicable by law.

DATED this 23rd day of March, 2009.

Respectfully submitted,

JEFFREY C. SULLIVAN
United States Attorney

/s/ Priscilla T. Chan
PRISCILLA T. CHAN, WSBA No. 28533
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Attorneys for Defendant Potter.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this date, I electronically filed the foregoing with the Clerk
3 of Court using the CM/ECF system which will send notification of such filing to the
4 attorney(s) of record for the defendant(s).

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7 I hereby certify that I have served the attorney(s) of record for the defendant(s) that
8 are non CM/ECF participants via USPS mail, postage pre-paid.

9 Lance McDermott, pro se
10 1819 South 104th Street
Seattle, Washington 98168

11
12 DATED this 23rd day of March, 2009.
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14 _____
15 /s/ Priscilla T. Chan
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